BEST COPY
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MONTANA LEGISLATIVE HISTORY

Chapter 620 1989

Bill H _____ S 330 Original bill & history ____C

H. Committee on Business & Economic Development		S. Committee on Business & Industry	
Hearing Date(s) Mar 03	✓C	Hearing Date(s) Feb 09	✓C
_____	____C	Feb 10	✓C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out _____	____C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Conference Committee Mar 19

Note: The minutes for the Free Conference Committee were not recorded.

2/02	REFERRED TO NATURAL RESOURCES		
2/10	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED		
2/18	2ND READING PASSED	26	24
2/21	3RD READING PASSED	29	21
	TRANSMITTED TO HOUSE		
2/22	REFERRED TO NATURAL RESOURCES		
3/15	HEARING		
3/15	TABLED IN COMMITTEE		

SB 328 INTRODUCED BY HARDING
PROVIDE FOR LICENSING OF EMBALMERS

2/02	INTRODUCED		
2/02	REFERRED TO STATE ADMINISTRATION		
2/03	FISCAL NOTE REQUESTED		
2/09	FISCAL NOTE RECEIVED		
2/10	HEARING		
2/10	FISCAL NOTE PRINTED		
	DIED IN COMMITTEE		

SB 329 INTRODUCED BY CRIPPEN
REVISE EMINENT DOMAIN

2/02	INTRODUCED		
2/02	REFERRED TO JUDICIARY		
2/03	FISCAL NOTE REQUESTED		
2/08	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		
	DIED IN COMMITTEE		

SB 330 INTRODUCED BY BECK, ET AL.
SUSPEND INSURER CERTIFICATE FOR UNLICENSED AGENTS

2/03	INTRODUCED		
2/03	REFERRED TO BUSINESS & INDUSTRY		
2/09	HEARING		
2/11	COMMITTEE REPORT--BILL PASSED		
2/14	2ND READING PASSED	47	0
2/16	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/03	HEARING		
3/03	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/06	2ND READING CONCURRED	86	5
3/07	3RD READING CONCURRED	92	4
	RETURNED TO SENATE WITH AMENDMENTS		
3/11	2ND READING AMENDMENTS NOT CONCURRED	35	0
3/14	CONFERENCE COMMITTEE APPOINTED		
3/20	CONFERENCE COMMITTEE DISSOLVED		
	HOUSE		
3/16	CONFERENCE COMMITTEE APPOINTED		
3/22	CONFERENCE COMMITTEE DISSOLVED		
	SENATE		
3/20	FREE CONFERENCE COMMITTEE APPOINTED		

3/21	FREE CONFERENCE COMMITTEE REPORT NO. 1		
3/30	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	0
4/01	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	0
	HOUSE		
3/22	FREE CONFERENCE COMMITTEE APPOINTED		
4/06	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	92	2
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	97	0
4/15	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 620 EFFECTIVE DATE: 10/01/89		

SB 331 INTRODUCED BY BISHOP
GENERALLY REVISE THE UNIFORM PROBATE CODE AND RELATED LAW

2/03	INTRODUCED		
2/03	REFERRED TO JUDICIARY		
2/10	HEARING		
2/13	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	42	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/21	REFERRED TO JUDICIARY		
3/08	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/14	2ND READING CONCURRED	80	3
3/16	3RD READING CONCURRED	94	1
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	48	0
4/04	3RD READING AMENDMENTS CONCURRED	49	0
4/11	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/18	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 582 EFFECTIVE DATE: 10/01/89		

SB 332 INTRODUCED BY MANNING, ET AL.
CHANGE LOCAL BONDING DEFINITION--ESTABLISH TERM OF BOND ISSUE

2/03	INTRODUCED		
2/03	REFERRED TO LOCAL GOVERNMENT		
2/09	HEARING		
2/10	COMMITTEE REPORT--BILL PASSED		
2/14	2ND READING PASSED	47	0
2/16	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		

sector every opportunity to stay in business in the state, and he thought that was the purpose of SB 354.

DISPOSITION OF SENATE BILL 354

Discussion: None

Amendments and Vote: None

Recommendation and Vote: None

HEARING ON SENATE BILL 330

Presentation and Opening Statement by Sponsor: Senator Beck, Senate District 24, said the general purpose of SB 330 was to change certain laws regulating insurance in Montana. It was not intended to prohibit the growth of insurance, but it would bring Montana's laws into agreement with other states.

Senator Beck said the first portion of the bill allowed the Commissioner to rescind or revoke an insurers certificate of authority, if the insurer transacted insurance in this state through an unlicensed insurance agent, or failed to supervise its insurance agents reasonably, and assured compliance with the Montana insurance code. This would make insurers transacting business in Montana more responsible. The bill called for adopting an updated version of the National Association of Insurance Commissioners Insurance Code and accompanying Systems Regulatory Act. The bill required insurance holding companies to register properly, and provide accurate information to the Montana Insurance Department about their transactions.

Senator Beck said the final portion of the bill had been adopted from the National Association of Insurance Code Law and was the model law on credit for reinsurance. He said this portion of the bill modified portions of the Montana Insurance Law. He stated, most importantly, it allowed for credit when reinsurers established trusts or letters of credit to cover amounts owed other insurers. He said the bill also tightened the requirements for alien reinsurance.

List of Testifying Proponents and What Group They Represent:

Kathy M. Irigoin - State Auditor's Office
Patrick Driscoll - American Council of Life Insurance
Jacqueline Terrell - American Insurance Association

List of Testifying Opponents and What Group They Represent:

None

Testimony: Kathy Irigoin presented her written testimony for the record, and explained each section of the bill for the committee. (See exhibits #11 and #12)

Patrick Driscoll stated they generally supported the bill in its attempt to bring Montana into compliance with the National Association of Insurance Commissioners models. However, the provisions in section 8, pertaining to reinsurance credit, are probably a major difference form the model act. He said they supported the bill, with that reservation.

Jacqueline Terrell said her association supported this bill, to the extent that reflects the National Association of Insurance Commissioners model language. She stated the provisions in Section 1 were more far reaching than was warranted, but they generally supported SB 330.

Questions From Committee Members: Senator Thayer asked if the bill went beyond what the model act suggested. Mr. Driscoll said Montana law currently went beyond the model act and this bill brought Montana law into closer compliance with the model act, but the bill would still allow Montana to consider reinsurance arrangements for non-domestic insurers.

Senator Thayer asked why we were trying to be more stringent, and do more than the national models required? Kathy Irigoin said the bill was pretty much in line with two different models of the National Association of Insurance Commissioners codes. She said the first section of the bill was not from the National Association of Insurance Commissioners code model. She said the second section complied with the holding companies model from the National Association of Insurance, and contained a few changes that the legislative council recommended.

She stated the third portion of the bill, on reinsurance, was the only departure from the model. She said Section 8 allowed the law to be applied to all insurance companies, which was the way current reinsurance laws are. In that last section of the bill, we tighten up one part and loosen up another part, as suggested by the National Association of Insurance Commissioners model.

We tightened up, to no longer give credit for reinsurance, if the insurance is needed for an alien insurer that only has a resident attorney in the United States. Under the proposed, bill the alien reinsurer has to have a trust fund of twenty million dollars in a federal reserve system bank, or the reinsurance has to involve risks entirely outside the United States.

Senator Thayer asked if the industry people were satisfied with this bill, or were they offering any amendments? Patrick Driscoll said they were not offering any amendments and were basically satisfied.

Senator Noble asked if the tightening was because there had been quite a lot of past trouble in being paid off by reinsurers? Kathy Irigoin said the main problem with alien insurers was that they were domiciled outside of the country, and if something went bad with the reinsured, it was difficult for the company here to deliver insurance, or to collect on reinsurance. She said it was shaky, especially if the only connection that alien insurer had, to the United States, was someone living here as their agent. She said a required trust account helped avoid a lot of problems, because you had some money physically in the United States that could be attached.

Closing By Sponsor: Senator Beck stated that when you had the industry and the departments all in favor of a bill it has to be a good bill. I hope you will pass it.

DISPOSITION OF SENATE BILL 330

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON SENATE BILL 335

Presentation and Opening Statement by Sponsor: Senator Thayer, Senate District 19, said that in 1986 the Federal Home Loan Bank Board of Regulation granted federally chartered savings and loan associations, located in one state, the authority to merge with savings associations of other states, or to branch into other states, provided state law of each state involved would permit state chartered savings association to do so. The interstate merger branching authority was

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 2/9/89

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN	✓		
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN"J.D."LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 12
DATE 2/9/89
BILL NO. SB 330

Kathy M. Irigoin
State Auditor's Office
444-2040

TESTIMONY ON SENATE BILL 330
STATE AUDITOR'S OFFICE
February 9, 1989

I. Introduction

SB 330 has three parts all intended to update and bring Montana's law in line with what is happening in other states without impeding the growth and development of insurers transacting insurance in Montana. Most of SB 330 is based on models from the National Association of Insurance Commissioners (NAIC).

II. Section-by-section explanation

A. Suspension or Revocation Authority

The first section of the bill (page 2, line 4 through line 12, page 6) allows the commissioner to suspend or revoke an insurer's certificate of authority if the insurer transacts insurance in this state through an unlicensed insurance agent or fails to supervise its insurance agents reasonably to assure their compliance with the Montana Insurance Code. Providing this authority to the commissioner would make insurers transacting insurance in Montana more responsible for the actions of their agents and encourage them to employ only people who have true knowledge of the insurance products they sell.

B. Insurance Holding Company Systems

Sections 2 through 7 (page 4, line 13 through line 11, page 23) incorporate the updated version of the NAIC Insurance Holding Company System Regulatory Act. Generally, this portion of the bill requires insurance holding companies to register properly and provide accurate information to the Montana Insurance Department about their affiliated company transactions. Specifically, obsolete and vague language that never was part of a model act is deleted in section 2 (page 6, line 21 through line 7, page 7).

In section 3, on page 10, lines 20 through 25, an acquiring party is required to pay certain costs of reviewing a proposed merger or acquisition of a domestic insurer.

In section 4, language that is unique to Montana is being stricken (page 11, lines 5 through 10). The language being stricken was relied upon by Life of Montana to argue that the commissioner had no authority to review the acquisition of Life of Montana by a certain entity because the acquisition was

being effected through the transfer of "not issued and outstanding" shares. For example, if 1,000 shares were authorized and only 200 shares issued, Life of Montana argued that the remaining 800 shares (not issued and outstanding) could be issued to a single entity and control of Life of Montana thereby be transferred to the entity without prior approval of the commissioner. Judge Gordon Bennett held that such a transfer should not be allowed without approval of the commissioner, deciding the language proposed to be stricken in SB 330 had no logical meaning.

Section 5 of SB 330 (page 12, line 17 through line 20, page 16) requires an insurer which is a member of an insurance holding company system to register with the commissioner and to file an annual registration statement containing material information about the relationship between the insurer and the insurance holding company system. An insurance holding company system insurer must also notify the commissioner of changes in the information contained in the registration statement (page 15, lines 3 through 6). A person in an insurance holding company system must provide accurate information to an insurer that is subject to the holding company registration requirements (page 15, lines 16 through 20).

Subsection (1) of section 6 of SB 330 (page 16, line 21 through line 16, page 17) requires that fees and expenses charged to an insurer by its affiliate must be reasonably calculated and documented. The purpose of this requirement is to prevent an affiliate from overcharging an insurer, thereby harming policyholders. Subsection (2) of section 6 (page 17, line 17 through line 14, page 19) enumerates a list of material transactions between an insurer and an affiliate which must be reported to the commissioner 30 days in advance. The commissioner may disapprove such a transaction. Materiality is determined for each kind of transaction and each kind of insurer by setting specific thresholds. The requirement that certain transactions between insurers and affiliates be reviewed by the commissioner is intended to prevent adverse financial effects on the insurer.

Subsection (3) of section 6 (page 19, lines 15 through 22) provides that a series of similar transactions within a 12-month period are considered as a single transaction if the intent behind them was to evade review. The provision is intended to prevent circumvention of the law by an insurer which purposely structures its transactions so that they fall slightly below the thresholds set for review by the commissioner.

Subsection (4) of section 6 (page 19, line 23 through line 2, page 20) requires the commissioner's review to be keyed to whether a transaction may harm policyholders. Subsection (5) of section 6 (page 20, lines 3 through 7) require an insurer to notify the commissioner within 30 days if it has purchased more than 10% in a corporation.

Section 7 specifies a civil penalty for an insurer which fails to file a registration statement (page 21, lines 13 through

civil penalty for a director or officer who violates a registration statement requirement (page 21, line 22 through line 9, page 22), and permits the commissioner to stop or reverse a transaction that is not reported and is harmful to policyholders, creditors, or the public (page 22, lines 10 through 20). Without penalties in the statute, the registration statement requirements would be meaningless.

C. Credit for Reinsurance

Section 8 (page 32, line 12 through line 21, page 28) incorporates the updated NAIC Model Law on Credit for Reinsurance, a model act that has been adopted by many other states and has been effective in ensuring that an insurer's financial statement properly reflects the results of ceding reinsurance to a reinsurer. Specifically, the changes in subsection (2) of section 8 (page 23, lines 17 through 25) are for clarification purposes only. Subsection (3) of section 8 (page 24, line 1 through line 9, page 26) defines the circumstances under which the commissioner may grant credit for reinsurance to an alien insurer. To receive credit for reinsurance, an alien reinsurer must either (1) maintain a trust fund of at least $20 million in the United States with a member bank of the federal reserve system and have the trustees of the fund report annually to the commissioner (page 24, line 11 through line 4, page 26); or (2) write risks that are entirely outside the United States (page 26, lines 5 through 9).

Subsection (4) (page 26, line 10 through line 6, page 27) sets forth additional conditions (related mostly to court procedure and jurisdiction) for credit for reinsurance involving a foreign or alien reinsurer that is not authorized to transact insurance in Montana.

Subsection (5) (page 27, line 7 through line 4, page 28) provides that, if a reinsurer is not licensed to transact insurance in Montana and does not meet minimum Montana financial standards, then credit for ceded reinsurance is still possible if the ceding insurer holds: (1) cash belonging to the reinsurer, (2) qualifying securities of the reinsurer, (3) clean irrevocable letters of credit issued by a federal reserve system bank, or (4) a security acceptable to the commissioner.

The main reasons for section 8 are that standards for alien reinsurers under current Montana law is too liberal in requiring an alien reinsurer simply to have an attorney-in-fact residing in the United States. Also, current Montana law on credit for reinsurance is too inflexible in not considering trusts or letters of credit in determining credit for reinsurance. In general, this portion of the bill tightens up the requirements on alien reinsurance and allows new ways of receiving credit for reinsurance.

expect grocery chains to become involved.

Closing by Sponsor: Senator McLane said he saw SB 310 as good for business, providing a convenience, and as providing a new option with consumer protection. He said he recommended a do pass.

DISPOSITION OF SENATE BILL 310

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch made a motion SB 310 DO PASS. Senator Noble seconded the motion. The motion Carried Unanimously.

DISPOSITION OF SENATE BILL 330

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Weeding made a motion SB 330 DO PASS. Senator Lynch seconded the motion. The motion Carried Unanimously.

DISPOSITION OF SENATE BILL 354

Discussion: Senator Lynch said he thought the state had probably gone too far with their printing procedure in the last ten years, and they should be leery of the public taking over private business. He stated that Governor Stephens has indicated privatization as one of his interests. Senator Lynch said his amendment applied to the Montana Codes. (See Exhibit #11) He said SB 354 would virtually put the Legislative Council out of business if the bidding process was required for them.

Mary McCue stated they had a vested interest, but one of the problems was with the code having to deal with an outside typesetter. She said they had projected that it would be January or February before the code was available, and that wasn't feasible. She said the code had been finished by Labor Day last session, and they would like to keep up that pace.

SENATE STANDING COMMITTEE REPORT

February 10, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 330 (first reading copy -- white), respectfully report that SB 330 do pass.

DO PASS

Signed: _____

Gene Thayer, Chairman

S.C. 159
2/10
5:46 p.m.

SCRSB330.210

and boats. Snowmobiles and boats are often substantial investments, but there is no way for a lender to establish a lien on these. As a result lenders often file liens on other property and titled vehicles to have their lien provision secure. This will provide for the protection of or release of secured interest, a notification to owners that the lien has been filed, and the lien filing fee.

Testifying Proponents and Who They Represent:

Bob Robinson, Division of Motor Vehicles, Dept. of Justice

Proponent Testimony:

Mr. Robinson said this bill is a proposal that came from the registrar's bureau in Deer Lodge. Basically it provides the same mechanism for people who are titling their boats and snowmobiles to have a lien filed against them like cars, trailers, trucks, etc. As it is now, the lender has to get a UCC filing through the secretary of state's office. Right now we find that quite often when a person buys a boat which is a substantial investment, the bank is placing a lien on the individual's home or other titled vehicles as opposed to being able to put a lien directly on the boat.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Bachini asked Sen. Beck if this could have been done in one bill? Sen. Beck said for some reason they came through as 2 bills.

Closing by Sponsor: Sen. Beck said he would appreciate the committee's support for these bills.

HEARING ON SENATE BILL 330

Presentation and Opening Statement by Sponsor:

Sen. Beck, Senate District 24. SB 330's general purpose is to change certain laws regulating the insurance in Montana. It is not intended to prohibit the growth of the insurance industry but to update and bring Montana's laws in line with the happenings in other states. It authorizes the commissioner of insurance to suspend or revoke an insurer's certificate of authority for failure to employ only licensed

insurance agents or failure to supervise its insurance agents. It requires holding company systems to register properly and to provide accurate information to the commissioner of insurance about their affiliated companies' transactions.

Testifying Proponents and Who They Represent:

James Borchardt, State Auditor's Office
Ron Ashebraner, State Farm Insurance
Jackie Terrell, American Insurance Assoc.
Larry Akey, MT Assoc. of Life Underwriters
Gene Phillips, NAII

Proponent Testimony:

See exhibit 1 for Mr. Borchardt's testimony.

Mr. Ashebraner said State Farm supports the bill, but proposes the first portion of the bill be stricken. State Farm has no control over the agents nor the office staff the agents hire because the agents are independent contractors. We support the policy that all agents should be licensed in the state of Montana.

Ms. Terrell stated that her association supports this bill. We specifically do not support, however, Section 1 and we request that you give the bill a do pass recommendation with the exception of Section 1. We request that you delete that section from the bill.

Mr. Akey stated that his association supports the bill with the amendment.

Mr. Phillips said his association also supports the bill with the amendment.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Blotkamp asked Mr. Borchardt if the agents or companies have attorneys to go through the language and interpret it? Mr. Borchardt said they do or they would not have been here in support of the bill.

Rep. Kilpatrick asked Mr. Borchardt what would happen to the bill if we amended Section 1 out? Mr. Borchardt said they would all live with it. Rep. Kilpatrick asked Sen. Beck about Section 1, the Senate did not take out the section and

undoubtedly these people must have said something in the Senate hearing, how do you feel about it? Sen. Beck said this is the first he has heard about it. It did not come up in the Senate hearing, but he has no problem with the proposed amendment.

Rep. Nelson asked Sen. Beck if they weren't just talking about lines 21 through 25 on page 2, not the whole Section 1? Sen. Beck said that could be. Paul Verdon said if you strike all of Section 1, the law will remain as it is right now.

Closing by Sponsor: Sen. Beck said he thinks there is a lot of good in the bill and if you want to amend Section 1 that is fine with me. I have no problem with this.

DISPOSITION OF SENATE BILL 175

Motion: Rep. DeMars moved BE CONCURRED IN.

Amendments, Discussion, and Votes: None

Recommendation and Vote: SB 175 BE CONCURRED IN unanimously.

DISPOSITION OF SENATE BILL 365

Motion: Rep. Bachini moved BE CONCURRED IN.

Amendments, Discussion, and Votes: None

Recommendation and Vote: SB 365 BE CONCURRED IN unanimously.

DISPOSITION OF SENATE BILL 366

Motion: Rep. Bachini moved BE CONCURRED IN.

Amendments, Discussion, and Votes: None

Recommendation and Vote: SB 366 BE CONCURRED IN unanimously.

DISPOSITION OF SENATE BILL 330

Motion: Rep. Nelson moved BE CONCURRED IN.

Amendments, Discussion, and Votes: Rep. Nelson moved to delete Section 1.

Rep. Simon said he was worried about the cleanup language in Section 3 if we take Section 1 out. Paul Verdon, said it

would stay as it is, it is only updating technical language. Paul recommended striking the whole section not just particular lines.

The amendment to delete Section 1 from the bill DO PASS.

Recommendation and Vote: SB 330 BE CONCURRED IN as amended unanimously.

DISPOSITION OF SENATE BILL 298

Motion: Rep. Simon moved BE CONCURRED IN and moved the amendments.

Amendments, Discussion, and Votes: The amendment DO PASS.

Recommendation and Vote: SB 298 BE CONCURRED IN as amended.

ADJOURNMENT

Adjournment At: 9:30 a.m.

REP. BOB PAVLOVICH, Chairman

BP/sp

5003.min

DAILY ROLL CALL

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date 3 3 89

NAME	PRESENT	ABSENT	EXCUSED
PAVLOVICH, BOB	✓		
DeMARS, GENE	✓		
BACHINI, BOB	✓		
BLOTKAMP, ROB	✓		
HANSEN, STELLA JEAN	✓		
JOHNSON, JOHN	✓		
KILPATRICK, TOM	✓		
McCORMICK, LLOYD "MAC"	✓		
STEPPLER, DON	✓		
GLASER, BILL	✓		
KELLER, VERNON	✓		
NELSON, THOMAS	✓		
SIMON, BRUCE	✓		
SMITH, CLYDE	✓		
THOMAS, FRED	✓		
WALLIN, NORM	✓		
PAUL VERDON	✓		

ROLL CALL VOTE

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

DATE 3/3/89 BILL NO. SB 330 NUMBER

NAME	AYE	NAY
Bob Pavlovich	X	
Bob Bachini		
Rob Blotkamp		
Gene DeMars		
Bill Glaser		
Stella Hansen		
John Johnson		
Vernon Keller		
Tom Kilpatrick		
Lloyd McCormick		
Thomas Nelson		
Bruce Simon		
Clyde Smith		
Don Steppler		
Fred Thomas		
Norm Wallin		
TALLY	16	

Sue Pennington
Secretary

Bob Pavlovich
Chairman

MOTION: Rep Nelson moved be concurred in as amended

Rep Thomas will carry

STANDING COMMITTEE REPORT

March 3, 1989

Mr. Speaker: We, the committee on Business and Economic Development report that SENATE BILL 330 (blue reference copy), with statement of intent included, be concurred in as amended.

Signed: _____
Robert Pavlovich, Chairman

[REP. THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, lines 5 through 9.
Following: "INDUSTRY;" on line 5
Strike: remainder of line 5 through "AGENTS;" on line 9

2. Title, line 13.
Strike: "33-2-119,"

3. Page 2, line 4.
Strike: section 1 in its entirety
Renumber: subsequent sections

Amendments to Senate Bill No. 330
Third Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
March 3, 1989

1. Title, lines 5 through 9.
Following: "INDUSTRY;" on line 5
Strike: remainder of line 5 through "AGENTS;" on line 9

2. Title, line 13.
Strike: "33-2-119,"

3. Page 2, line 4.
Strike: section 1 in its entirety
Renumber: subsequent sections

SB330
3/3/89

State Auditor's Office
444-2040

TESTIMONY ON SENATE BILL 330
STATE AUDITOR'S OFFICE
February 9, 1989

I. Introduction

SB 330 has three parts all intended to update and bring Montana's law in line with what is happening in other states without impeding the growth and development of insurers transacting insurance in Montana. Most of SB 330 is based on models from the National Association of Insurance Commissioners (NAIC).

II. Section-by-section explanation

A. Suspension or Revocation Authority

The first section of the bill (page 2, line 4 through line 12, page 6) allows the commissioner to suspend or revoke an insurer's certificate of authority if the insurer transacts insurance in this state through an unlicensed insurance agent or fails to supervise its insurance agents reasonably to assure their compliance with the Montana Insurance Code. Providing this authority to the commissioner would make insurers transacting insurance in Montana more responsible for the actions of their agents and encourage them to employ only people who have true knowledge of the insurance products they sell.

B. Insurance Holding Company Systems

Sections 2 through 7 (page 4, line 13 through line 11, page 23) incorporate the updated version of the NAIC Insurance Holding Company System Regulatory Act. Generally, this portion of the bill requires insurance holding companies to register properly and provide accurate information to the Montana Insurance Department about their affiliated company transactions. Specifically, obsolete and vague language that never was part of a model act is deleted in section 2 (page 6, line 21 through line 7, page 7).

In section 3, on page 10, lines 20 through 25, an acquiring party is required to pay certain costs of reviewing a proposed merger or acquisition of a domestic insurer.

In section 4, language that is unique to Montana is being stricken (page 11, lines 5 through 10). The language being stricken was relied upon by Life of Montana to argue that the commissioner had no authority to review the acquisition of Life of Montana by a certain entity because the acquisition was

being effected through the transfer of "not issued and outstanding" shares. For example, if 1,000 shares were authorized and only 200 shares issued, Life of Montana argued that the remaining 800 shares (not issued and outstanding) could be issued to a single entity and control of Life of Montana thereby be transferred to the entity without prior approval of the commissioner. Judge Gordon Bennett held that such a transfer should not be allowed without approval of the commissioner, deciding the language proposed to be stricken in SB 330 had no logical meaning.

Section 5 of SB 330 (page 12, line 17 through line 20, page 16) requires an insurer which is a member of an insurance holding company system to register with the commissioner and to file an annual registration statement containing material information about the relationship between the insurer and the insurance holding company system. An insurance holding company system insurer must also notify the commissioner of changes in the information contained in the registration statement (page 15, lines 3 through 6). A person in an insurance holding company system must provide accurate information to an insurer that is subject to the holding company registration requirements (page 15, lines 16 through 20).

Subsection (1) of section 6 of SB 330 (page 16, line 21 through line 16, page 17) requires that fees and expenses charged to an insurer by its affiliate must be reasonably calculated and documented. The purpose of this requirement is to prevent an affiliate from overcharging an insurer, thereby harming policyholders. Subsection (2) of section 6 (page 17, line 17 through line 14, page 19) enumerates a list of material transactions between an insurer and an affiliate which must be reported to the commissioner 30 days in advance. The commissioner may disapprove such a transaction. Materiality is determined for each kind of transaction and each kind of insurer by setting specific thresholds. The requirement that certain transactions between insurers and affiliates be reviewed by the commissioner is intended to prevent adverse financial effects on the insurer.

Subsection (3) of section 6 (page 19, lines 15 through 22) provides that a series of similar transactions within a 12-month period are considered as a single transaction if the intent behind them was to evade review. The provision is intended to prevent circumvention of the law by an insurer which purposely structures its transactions so that they fall slightly below the thresholds set for review by the commissioner.

Subsection (4) of section 6 (page 19, line 23 through line 2, page 20) requires the commissioner's review to be keyed to whether a transaction may harm policyholders. Subsection (5) of section 6 (page 20, lines 3 through 7) require an insurer to notify the commissioner within 30 days if it has purchased more than 10% in a corporation.

Section 7 specifies a civil penalty for an insurer which fails to file a registration statement (page 21, lines 13 through

21), specifies a civil penalty for a director or officer who violates a registration statement requirement (page 21, line 22 through line 9, page 22), and permits the commissioner to stop or reverse a transaction that is not reported and is harmful to policyholders, creditors, or the public (page 22, lines 10 through 20). Without penalties in the statute, the registration statement requirements would be meaningless.

C. Credit for Reinsurance

Section 8 (page ~~22~~ 23, line 12 through line 21, page 28) incorporates the updated NAIC Model Law on Credit for Reinsurance, a model act that has been adopted by many other states and has been effective in ensuring that an insurer's financial statement properly reflects the results of ceding reinsurance to a reinsurer. Specifically, the changes in subsection (2) of section 8 (page 23, lines 17 through 25) are for clarification purposes only. Subsection (3) of section 8 (page 24, line 1 through line 9, page 26) defines the circumstances under which the commissioner may grant credit for reinsurance to an alien insurer. To receive credit for reinsurance, an alien reinsurer must either (1) maintain a trust fund of at least $20 million in the United States with a member bank of the federal reserve system and have the trustees of the fund report annually to the commissioner (page 24, line 11 through line 4, page 26); or (2) write risks that are entirely outside the United States (page 26, lines 5 through 9).

Subsection (4) (page 26, line 10 through line 6, page 27) sets forth additional conditions (related mostly to court procedure and jurisdiction) for credit for reinsurance involving a foreign or alien reinsurer that is not authorized to transact insurance in Montana.

Subsection (5) (page 27, line 7 through line 4, page 28) provides that, if a reinsurer is not licensed to transact insurance in Montana and does not meet minimum Montana financial standards, then credit for ceded reinsurance is still possible if the ceding insurer holds: (1) cash belonging to the reinsurer, (2) qualifying securities of the reinsurer, (3) clean irrevocable letters of credit issued by a federal reserve system bank, or (4) a security acceptable to the commissioner.

The main reasons for section 8 are that standards for alien reinsurers under current Montana law is too liberal in requiring an alien reinsurer simply to have an attorney-in-fact residing in the United States. Also, current Montana law on credit for reinsurance is too inflexible in not considering trusts or letters of credit in determining credit for reinsurance. In general, this portion of the bill tightens up the requirements on alien reinsurance and allows new ways of receiving credit for reinsurance.

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 330

Call to order: By Chairman Tom Beck, on March 17, 1989, at 8:00 A.M.

ROLL CALL

Members Present: Senator Beck, Senator Noble, and Senator Williams. Representative Whalen and Representative Kilpatrick.

Members Excused: None

Members Absent: Representative Thomas

Staff Present: Jaelene Johnson, Secretary

DISPOSITION OF SENATE BILL 330

Discussion: Senator Beck - "Susan Witte is going to explain why they want this in the bill and then I'm going to let Bonny Tippy explain why they want it out."

Susan Witte - "Section 1...The reason the Commissioners office wants section 1 in the bill is because present law provides that an insurance agent--they're selling for a company that is not admitted to do business in this state. The Insurance Commissioner can revoke the insurance agent's license. There is no reciprocal provision for an unauthorized insurance company using insurance agents in this state. So, if you get the agent's license, why can't you go after the insurance company which isn't authorized to do business in the state? It's just a reverse, you go after the company as well as the agent. That's why we want it in."

Bonny Tippy explains the House Business and Economic Development Committee took out section 1.

Bonny Tippy - "(1.) This entire bill except for section 1 is model NAIC language. Section 1 was put in by an Insurance Commissioner in order to address a problem we don't believe a problem. She wants to be able to have the authority to remove an insurance company's certificate of authority if she feels that they are not taking fast enough action against an

agent that may or may not be guilty of some kind of an infringement...The vast majority of agents are independent contractors. They are not employees of insurance companies. They are independent contractors...They feel that if they have an agent that has been with them for several years, that they want to give that person a benefit of the doubt before they take immediate action. Just because there has been a complaint filed does not mean that person has done something wrong...Under this bill, the Insurance Commissioner could revoke a companies entire certificate of authority to do business in this state because she would be of the opinion that they did not act quickly enough upon report of an agents wrong-doing. What that could do is put 100 or 200 or 300 agents out of business in this state."

Jackie Terrell - "The insurance code has a number of sections that address this problem...Chapter 17 deals with the agents conduct and commissioners power to address any conduct that is not acceptable or is damaging to the policy holders. 17-102 is the definition of the agent and the appointment. 17-1001 sub (1) sub (a) through (f) are the things that could cause that agent to lose the licence. 17-1102 discrepancy accountability for premiums..."

Representative Whalen - "That (Chapter 17) allows disciplinary action against agents?"

Ms. Terrell indicated that it was.

Bonny Tippy - "There was a case--the New York Life case. Where an agent who had been with the company a very longtime...He was a man who was found to be doing things that weren't appropriate at all. He was selling policies to other family members without their knowledge...He was suspended by New York Life. However, the process took a long time and I know the commissioner took some moves to suspend the certificate of authority of New York Life. There are about two hundred to three hundred New York Life agents in Montana...If that certificate of authority had been suspended over this one agents wrong-doing, all of those people would have been put out of work."

Representative Whalen - "What authority was in title 28?"

Jackie Terrell - "That would be the general laws of agency retail...In any lawsuit, those laws of agency are also going to control the relationship between the agent and the company."

Representative Whalen - "So, she would have to get involved in a civil action under title 28?"

Ms. Terrell stated that is correct.

Jackie Terrell explained, "The Commissioner may, after conducting a hearing for 33-1701, impose a fine not to exceed the sum of $25,000 upon a person found violating any provision of this code."

Susan Witte - "On 33-2119 which is section one where the amendment goes in. If you will look at sub-section (c)--Right now, the Insurance Commissioner can go after an insurance agent who is selling a product in this state where that product is being sold by an unauthorized company. If a company is not authorized to do business in the state, we can go after that insurance agent. Sub-section (c) will allow the Commissioner to also go after the unauthorized insurance company from using an agency in the state. Sub-section (c) is pretty important...Sub-section (d) We can go after an insurance company for actions which are injurious to the public. In other words, if they have notification or they see a bunch of altered applications coming from one of their agents in the field, we can't use general agency law. We're pretty much confined to title 23. So, if we are going to go after the insurance company and its relationship with its agent, who is submitting altered applications...We have to get into that agency relationship. Some of these insurance companies have received lots of applications where it is obvious there has been forgeries made. The company should notify us of these problems...Section (d) may be a problem...I don't see the industries problem with (c)."

Jackie Terrell - "This (Section "c") does not address unauthorized companies. This is to allow you to revoke the certificate of authority of an authorized company who is operating in this state and who has one agent who may have sold insurance improperly...This is not against unauthorized companies. Absolutely, you should go after an unauthorized company. But it's the authorized company that has one bad agent that we are concerned about...Section (c) gives the Commissioner the power to revoke their ability to do business in Montana."

Senator Beck - "You've got a problem with unlicensed insurance companies trying to do business in Montana. Is there any way you can address that particular problem?"

Susan Witte - "Off hand, no. But, there is a problem with using unlicensed agents too."

Representative Whalen - "The impression I'm getting from listening to this discussion--although the Insurance Commissioner may have authority under the general civil statutes to assume a particular insurance company that Ms. Witte is having particular problems with...The whole purpose of having an insurance department is so some of those things can be handled through her inherent powers." Representative Whalen indicated that the department should have sole authority to keep from constantly having to jump into the judicial system. "That's why we give executive agencies and departments authority to do different things...What we are trying to do here is give her (Ms. Witte) direct authority under the powers of her office to do something which she now has to go into the judicial system to obtain...She doesn't have to exercise her authority but it's an option she has...Just because she has an option sometimes that's enough in order to get a problem corrected. You don't have to put three hundred agents out in the cold."

Jackie Terrell - "In most instances an insurance company does not have control the same way they would if they were an employer over the agent. You are imposing a very strong power over the company for a relationship they do not have that sort of control over."

Representative Whalen - "I think we have to be realistic when we are giving authority to an Insurance Commissioner. I presume she's got a little bit of sense when she's going exercise the authority...I take it, your objection is sub-section (d) on line 24, page 2...Is that correct?"

Senator Beck - "Susan Witte, would this bill help correct any of your problems?"

Ms. Witte - "Yes, it would...It's an option. It's not always used."

Representative Whalen - "I would move that section one language be reinserted in the bill with the exception that sub-section (c) and (d) be deleted."

Representative Whalen - "Which of those provisions does your office think is most important, section (c) or (d)? If a compromise were to be struck on those two provisions, which one is the most important?"

Susan Witte - "I guess I would have to say section (d)."

(The motion was to insert section one back into the bill and strike sub-sections (c) and (d).) The motion carried with the Senate concurring unanimously Senator Beck, Senator Williams, and Senator Noble voting yes. Representative Whalen and Representative Kilpatrick voting yes.

ADJOURNMENT

Adjournment At: 8:23 A.M.

SENATOR TOM BECK, Chairman

TB/jj

ROLL CALL

CONFERENCE COMMITTEE ON SENATE BILL 330

51st LEGISLATIVE SESSION -- 1989 Date 3-17-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR TOM BECK	X		
SENATOR JERRY NOBLE	X		
SENATOR BOB WILLIAMS	X		
REP. TIMOTHY WHALEN	X		
REP. TOM KILPATRICK	X		

Each day attach to minutes

CONFERENCE COMMITTEE REPORT

Report No. 1
page 1 of 2
March 18, 1989

MR PRESIDENT AND MR. SPEAKER

We, your Free Conference Committee on SB 330 met and recommend that this Conference Committee report be adopted and that SB 330 (reference copy -- salmon) be amended as indicated in the INSTRUCTIONS.

FOR THE SENATE

Sen. Beck, Chairman

Sen. Noble

Sen. Williams

FOR THE HOUSE

Rep. Whalen

Rep. Kilpatrick

Rep. Thomas

We Considered: The House Committee on Business and Economic Development amendments to SB 330 (third reading copy -- blue) dated March 3, 1989.

INSTRUCTIONS: Strike: The House Committee on Business and Economic Developments amendments Nos. 2 and 3 in their entirety.

Amend SB 330 (reference copy -- salmon) as follows:

1. Title, line 13.
Following: "~~33-2-119,~~"
Insert: "33-2-119,"

2. Page 4.
Following: line 12
Insert: "Section 1. Section 33-2-119, MCA, is amended to read:

"33-2-119. Suspension or revocation for violations and special grounds. (1) The commissioner may, in his discretion, suspend or revoke an insurer's certificate of authority if, after a hearing thereon, he finds that the insurer has:

(a) violated any lawful order of the commissioner or any provision of this code other than those for which suspension or revocation is mandatory;

continued

(b) reinsured more than 90% of its risks resident, located, or to be performed in Montana, in another insurer. In considering suspension or revocation, the commissioner shall consider all relevant factors, including whether:

(i) after the reinsurance transaction all parties will be in compliance with Montana law; and

(ii) the transaction will substantially reduce protection and service to Montana policyholders.

(2) The commissioner shall, after a hearing thereon, suspend or revoke an insurer's certificate of authority if he finds that the insurer:

(a) is in unsound condition or in such condition or using such methods or practices in the conduct of its business as to render its further transaction of insurance in Montana injurious or hazardous to its policyholders or to the public;

(b) has refused to be examined or to produce its accounts, records, and files for examination or if any of its officers have refused to give information with respect to its affairs, when required by the commissioner;

(c) has failed to pay any final judgment rendered against it in Montana within 30 days after the judgment became final;

(d) with such frequency as to indicate its general business practice in Montana, has without just cause refused to pay a proper ~~claims~~ claim arising under its policies, whether ~~any such~~ the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to ~~such~~ the third person, or without just cause compels ~~such~~ the insured or claimant to accept less than the amount due ~~them~~ him or to employ attorneys or to bring suit against the insurer or ~~such an~~ insured to secure full payment or settlement of ~~such~~ the claims;

(e) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer which transacts direct insurance in Montana without having a certificate of authority therefor, except as permitted as to a surplus lines insurer under part 3 of this chapter.

(3) The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings have been commenced in any state.""

Renumber: subsequent sections

ADOPT

REJECT

SB 330

STANDING COMMITTEE REPORT

March 3, 1989

Mr. Speaker: We, the committee on Business and Economic Development report that SENATE BILL 330 (blue reference copy), with statement of intent included, be concurred in as amended.

Signed: Robert Pavlovich, Chairman

[REP. THOMAS WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Title, lines 5 through 9.
Following: "INDUSTRY;" on line 5
Strike: remainder of line 5 through "AGENTS;" on line 9

2. Title, line 13.
Strike: "33-2-119,"

3. Page 2, line 4.
Strike: section 1 in its entirety
Renumber: subsequent sections

HOUSE

BV

501301SC.HBV

Conf. Comm.

DATE: 3/17

BILL: SB330

PROPONENTS

NAME	REPRESENTING	EXHIBIT
Bonnie Tippey	Insurance	
Jackie Terrell		
Timothy Whalen	Representative	
Jerry Noble	Senator	
Tom Beck	Senator	
Bob Williams	Senator	
Susan Ames		
Thomas Kirkpatrick	Representative	
Lamy Ames		